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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,441	12/05/2003	Susan Levin	K1C2-44500	9379

26252 7590 10/15/2007  
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EXAMINER
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KRASNIC, BERNARD

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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10/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/728,441

Applicant(s)

LEVIN ET AL.

Examiner

Bernard Krasnic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-14, 17 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14, 17, and 25-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. The amendment filed 8/02/2007 have been entered and made of record.

2. The Applicant canceled claims 7, 15, 16, and 18-24.

3. The Applicant has included newly added claims 25-33.

4. In response to the amendments filed on 8/02/2007:

The "Objections to the Drawings" have been entered and therefore the Examiner withdraws the objections to the drawings.

The "Objections to the abstract" have been entered and therefore the Examiner withdraws the objections to the abstract.

The "Objections to the claims" have been entered and therefore the Examiner withdraws the objections to the claims.

5. Applicant's arguments with respect to claims 1-6, 8-14, 17, and 25-33 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's arguments filed 8/02/2007 have been fully considered but they are not persuasive.

The Applicant alleges, ""The present invention is directed to a method for creating ..." in page 13, and states respectively that the '325 art reference teaches a

color wheel selector device as opposed to the amended claim limitations of a color matching and coordinating reference system. The Examiner agrees in that the '325 art reference does not teach the claim limitations of "manufacturing a good having a color" as recited in the independent claims 1, 12, and 30. However the Examiner using the second reference Rice et al (US 2005/0100210) will show that the amended limitations are still not allowable over the prior art.

The Applicant alleges, "Tracy does not teach or disclose every element ..." in pages 14-15, and states respectively that the art reference does not suggest selecting an identification code representing a color match with the color of the manufactured good or labeling the good with the identification code or color name representing the identification code, to identify and consistently reference the color of the good as recited in claim 1. The Examiner agrees that the Tracy art reference '325 does not disclose the "manufacturing a good having a color" as recited in the independent claim 1. However the Examiner using the second reference Rice et al (US 2005/0100210) will show that the amended limitations are still not allowable over the prior art. Rice discloses a method for creating a color matching and coordinating reference system / scan desired starting color for use by manufacturers and consumers of goods / user of fabric or paint (see paragraphs [0110]-[0112]), comprising the steps of assigning a unique identification code / database of color names, numbers, or codes for each of a plurality of colors / colors (see paragraphs [0110]-[0112], a database is preset to store the assignment of color names, color numbers, or color codes); manufacturing a good / fabric or paint having a color (see paragraphs [0099] and [0110]-[0112], fabric or paint is

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manufactured); selecting / scanning an identification code / color names, numbers, or codes representing a color match / starting color scanning complete with the color of the good (see paragraphs [0110]-[0112], the fabric or paint is scanned to allow a selection of the identification code or color code to be determined by searching the color database for a match to mark a completion of the scan); and labeling the good / associating the fabric or paint by printing or saving the color scheme with color information for that particular fabric or paint with the identification code / color names, numbers, or codes, or a color name / color name representing the identification code, to identify and consistently reference, the color of the good (see paragraphs [0110]-[0112], the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification).

However Rice fails to specifically suggest the identification code comprising color family indicia and color value indicia. Tracy '325 discloses the identification code comprising color family indicia / color selection group and color value indicia / color value number (see Tracy '325, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and these coordinates relate to the color selection group, color value number, and color selection indicia). Therefore claim 1 is not allowable over the prior art.

The Applicant alleges, "Independent claim 12 was amended to include the ..." in page 15, "Claim 12 has also been amended to incorporate the step of ..." in page 15, and "Applicant respectfully submits that Adkins and the ..." in page 16, and states respectively that the prior art reference do not suggest the amended limitations as

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recited in claim 12. However as discussed above, independent claim 12 similarly to claim 1 is not allowable over the Rice and Tracy art references.

The Applicant alleges, "None of the cited references address the existence of the problem ..." in page 16, and states respectively that the cited references solve other, unrelated, problems. In response to applicant's argument that the cited references solve other unrelated problems, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The Applicant alleges, "New claims 25, 28, and 30 recite ..." in pages 16-17, "New claims 26, 29, and 31 recite ..." in page 17, and "New claim 32 discloses ..." in page 17, and states respectively that the cited references do not address the newly added claims. However the Examiner disagrees because the Rice et al reference does suggest these limitations as will be discussed below in the art rejections.

Therefore, claims 1-6, 8-14, 17, and 25-33 are not in condition for allowance as will be further discussed below in the rejections.

### ***Claim Objections***

7. Claims 25-26, 28-29 and 31-33 are objected to because of the following informalities:

Claims 25-26, 28-29 and 31-33, line 1 respectively: "the step" should be -- a step --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 30 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim limitation of "color scale indicia" for the identification code is not supported by the subject matter described in the Applicants specification in such a way to reasonably convey possession.

Claim 31 is dependent upon claim 30.

Appropriate correction is required.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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11. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claim 32, line 3: The limitation "the color selector device" lacks clear antecedent basis. It should be -- the color selector devices --.

Re Claim 32: The claim seems incomplete and the sentence structure is confusing. Therefore the Examiner cannot apply art rejection toward this claim because it is unclear what the claim is trying to state.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-6, 8-14, 17, and 25-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice et al (US 2005/0100210 A1) in view of Tracy et al (US 6,139,325, as applied in previous Office Action).

Re Claim 1: Rice discloses a method for creating a color matching and coordinating reference system / scan desired starting color for use by manufacturers and consumers



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of goods / user of fabric or paint (see paragraphs [0110]-[0112]), comprising the steps of assigning a unique identification code / database of color names, numbers, or codes for each of a plurality of colors / colors (see paragraphs [0110]-[0112], a database is preset to store the assignment of color names, color numbers, or color codes); manufacturing a good / fabric or paint having a color (see paragraphs [0099] and [0110]-[0112], fabric or paint is manufactured); selecting / scanning an identification code / color names, numbers, or codes representing a color match / starting color scanning complete with the color of the good (see paragraphs [0110]-[0112], the fabric or paint is scanned to allow a selection of the identification code or color code to be determined by searching the color database for a match to mark a completion of the scan); and labeling the good / associating the fabric or paint by printing or saving the color scheme with color information for that particular fabric or paint with the identification code / color names, numbers, or codes, or a color name / color name representing the identification code, to identify and consistently reference, the color of the good (see paragraphs [0110]-[0112], the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification).

However Rice fails to specifically suggest the identification code comprising color family indicia and color value indicia.

Tracy '325 discloses the identification code comprising color family indicia / color selection group and color value indicia / color value number (see Tracy '325, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and these

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coordinates relate to the color selection group, color value number, and color selection indicia).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rice by using Tracy's '325 teachings by including the color family indicia and the color value indicia to the identification code in order to enhance the match by considering harmonious color combination selection groups (see Tracy '325, col. 3, lines 15-20, abstract, lines 13-16).

Re Claim 2: Tracy further discloses the color family indicia / color selection group is selected from a list consisting of red, red/orange, orange, yellow/orange, yellow, yellow/green, green, blue/green, blue, blue/violet, violet, and red/violet (see col. 3, lines 50-57).

Re Claim 3: Tracy further discloses the color value indicia / color value number is a number (see col. 3, lines 65-68, col. 4, lines 10-19, the color value number representing lightness or darkness ranges from values 1 to 7).

Re Claim 4: Tracy further discloses the color value indicia / color value number for each color of the plurality of colors is between 0 and 8 / from values 1 to 7 (see col. 3, lines 65-68, col. 4, lines 10-19, the color value number representing lightness or darkness ranges from 1 to 7 which is between 0 and 8).

Re Claim 5: Tracy further discloses the step of using means / color selector device for determining color combinations to determine coordinating color identification codes / noted coordinate combination (see Fig. 1, col. 3, lines 38-45, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted). Rice also further discloses the step of using means / color wheel or scanner for determining color combinations to determine coordinating color identification codes / color names, numbers, or codes, which is similar to Tracy's color selector device (see Rice, paragraph [0110]).

Re Claim 6: Tracy further discloses the determining means / color selector device for determining color combinations comprises a color selector device / color selector device (see Fig. 1, col. 3, lines 38-45, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted). Rice also further discloses the determining means / color wheel or scanner for determining color combinations comprises a color selector device / color wheel or scanner, which is similar to Tracy's color selector device (see Rice, paragraph [0110]).

Re Claim 8: Tracy further discloses the identification code / noted coordinate combination [similar to Rice's color names, numbers, or codes] for each of the plurality

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of colors further comprises a color selector device indicia / color selection indicia (see col. 4, lines 27-42).

Re Claim 9: Tracy further discloses the step of associating the unique identification code / noted coordinate combination [similar to Rice's color names, numbers, or codes] for each color displayed / color combination on the color selector device (see col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and each of these coordinates relate to a specific color selection group, color value number, and color selection indicia).

Re Claim 10: Rice further discloses the step of assigning a unique color name / color name to each identification code / color code (see paragraphs [0110]-[0112], each code has a corresponding color name and color number, also "Learning Web Design: A Beginner's Guide to HTML, Graphics, and Beyond" [as applied in previous Office Action] by Jennifer Niederst [Chapter 13, 2001, O'Reilly Media Inc, <http://www.learningwebdesign.com/colornames.html>], there is a list or table of different RGB values and the name associated with the specific RGB values).

Re Claim 11: Rice further discloses the step of cross-referencing matching and coordinating colors using a table listing at least a portion of the plurality of colors according to each color's identification code / color code and assigned color name /

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color name (see paragraphs [0110]-[0112], a determination may be made for figuring the RGB values which make up the composition of a given materials color and most RGB values have specific names as described in the "Learning Web Design: A Beginner's Guide to HTML, Graphics, and Beyond" [as applied in previous Office Action] by Jennifer Niederst [Chapter 13, 2001, O'Reilly Media Inc, <http://www.learningwebdesign.com/colornames.html>], there is a list or table of different RGB values and the name associated with the specific RGB values).

As to claim 33, the discussions are addressed with respect to claim 11.

Re Claim 25: Rice further discloses the step of submitting the good / fabric or paint to a governing body / user and/or scanner to compare and match the color of the good / fabric or paint with the plurality of colors each assigned a unique identification code / color name, number or codes (see paragraphs [0110]-[0112], the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes).

Re Claim 26: Rice further discloses the step of labeling the good / associating the fabric or paint by printing or saving the color scheme with color information with indicia / color information representing that the governing body / user and/or scanner has compared and matched the color of the good / fabric or paint with the unique identification code / color names, numbers, or codes (see paragraphs [0110]-[0112], the user and/or

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scanner compare and match the fabric or paint to the database of color names, numbers or codes and the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification).

Re Claim 27: Tracy further discloses the assigning a unique identification code step includes the step of assigning an alpha-numeric identification comprising indicia for a color classification / color selector indicia, the color family / color selection group, and the color value / color value number (see col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, col. 4, lines 27-42, the color coordinates for each color relate to the color selection group, color value number, and color selection indicia).

Re Claim 12: Rice discloses a method for creating a color matching and coordinating reference system / scan desired starting color for use by manufacturers and consumers of goods / user of fabric or paint (see paragraphs [0110]-[0112]), comprising the steps of assigning a unique identification code / database of color names, numbers, or codes for each of a plurality of colors / colors (see paragraphs [0110]-[0112], a database is preset to store the assignment of color names, color numbers, or color codes); assigning a color name / color name to each identification code / color code (see paragraphs [0110]-[0112], the color name and color code are corresponding to each other); manufacturing a good / fabric or paint having a color (see paragraphs [0099] and [0110]-[0112], fabric or paint is manufactured); selecting / scanning an identification code / color names,

numbers, or codes representing a color match / starting color scanning complete with the color of the good (see paragraphs [0110]-[0112], the fabric or paint is scanned to allow a selection of the identification code or color code to be determined by searching the color database for a match to mark a completion of the scan); labeling the good / associating the fabric or paint by printing or saving the color scheme with color information for that particular fabric or paint with the identification code / color names, numbers, or codes, or the color name / color name assigned to the identification code, to identify and consistently reference, the color of the good (see paragraphs [0110]-[0112], the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification); and determining coordinating color identification codes / color codes using a color selector device / color wheel or scanner (see paragraphs [0110]-[0112], also the discussions are addressed with respect to claims 5-6) or a table listing coordinating color identification codes or assigned color names (for the limitation of "or a table listing ...", the discussions are addressed with respect to claim 11).

However Rice fails to specifically suggest the identification code comprising color family indicia, color value indicia, and color selector device indicia representing the color selector device on which the color is disposed.

Tracy '325 discloses the identification code comprising color family indicia / color selection group, color value indicia / color value number, and color selector device indicia / color selection indicia representing the color selector device / color wheel on which the color is disposed (see Tracy '325, col. 1, lines 31-43, col. 4, lines 27-42 and

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58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and these coordinates relate to the color selection group, color value number, and color selection indicia).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rice by using Tracy's '325 teachings by including the color family indicia, the color value indicia, and the color selector device indicia to the identification code in order to enhance the match by considering harmonious color combination selection groups (see Tracy '325, col. 3, lines 15-20, abstract, lines 13-16).

As to claim 13, the discussions are addressed with respect to claim 2.

As to claim 14, the discussions are addressed with respect to claim 3.

As to claim 17, the discussions are addressed with respect to claim 9.

As to claims 28-29, the discussions are addressed with respect to claims 25-26.

As to claim 30, the discussions are addressed with respect to claims 12 and 25. The color scale indicia of claim 30 is interpreted to be the color shades (see Tracy, col. 4, lines 1-26).

As to claim 31, the discussions are addressed with respect to claim 26.



***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Menner et al discloses a method and system for color matching decorative products; Gheblikian discloses a small component parts filing and inventory control system; the two Non-Patent Literature articles disclose Self-Service Kiosk News and New Tools to Help Consumers Choose Color.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Krasnic whose telephone number is (571) 270-

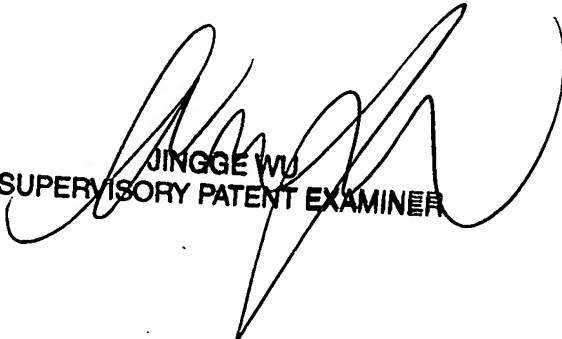
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1357. The examiner can normally be reached on Mon-Thur 8:00am-4:00pm and every other Friday 8:00am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bernard Krasnic  
September 28, 2007

  
JINGGE WU  
SUPERVISORY PATENT EXAMINER